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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,304	07/01/2003	Michael Andrew Fischer	050337-1200 (05CX10059WL)	5599
24504 7590 08/21/2008 THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 600 GALLERIA PARKWAY, S.E. STE 1500 ATLANTA, GA 30339-5994				
EXAMINER				
DAVENPORT, MON CHERI S				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/611,304

**Applicant(s)**

FISCHER ET AL.

**Examiner**

MON CHERI S. DAVENPORT

**Art Unit**

2616

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 8-21, and 23-29 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 6, 7 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-29** rejected under 35 U.S.C. 103(a) as being unpatentable over Kawai et al. (US patent Number 2001/0033581) in view of Desai et al. ( US Patent Application Publication 2002/0138854).

Regarding **Claims 1, 5 and 21** Kawai et al. discloses a method comprising:

queuing said first portion of said first frame( see figure 1, portion of divided sent to buffer( queue), see [0093], lines 1-6, packet divided and received by buffer(queue) a first portion)

transmitting said first portion of said first frame into a shared-communications channel (see [0094], lines 16-20, packets are output(transmitting) from the input buffer); and

receiving a second portion of said first frame after said transmission of said first portion has started (see figure 1, receiving a second portion of packet divided by packet divider, see [0093], lines 1-6, packet divided and received by buffer a second portion )

Desai et al. teaches storing a description of a first frame wherein said description comprises (see [0352], lines 1-5, storing in the original descriptor field, see figure 37A-B)

(1) a frame length (see [0352], lines 1-5, packet size, figure 37A-B)

(2) a first transmission rate(data rates) (see [0352], lines 1-5,sustained rate, peak rate, figure 37A-B)

receiving a first portion of said first frame wherein the length of said first portion is less than said frame length and is based on( the term 'based on' is a broad term in which the term 'based on' is interpreted broad as the length of the first portion is related to a first transmission rate) said first transmission rate ( see figure 1, receiving a first portion of packet divided by packet divider, see [0093], lines 1-6, packet divided and received by buffer a first portion )

transmitting at said first transmission rate (see [0352], lines 1-5, sustained rate for transmitting).

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Kawarai et al. invention with Desai et al. invention because Desai et al. invention provides an access technology that can expand the bandwidth available to an end user( see Desai et al. [0008], lines 5-9).

Regarding **claims 4, 8 and 23** Kawarai et al. in view of Desai et al. discloses everything claimed as applied above (see claims 1 and 21).

Kawarai et al. discloses queuing said second portion of said first frame wherein the length of said second portion is less than said frame length, and is based on said first transmission rate and the time required to receive said second portion (see figure 1, receiving a second portion of packet divided by packet divider, see [0093], lines 1-6, packet divided and received by buffer( queuing) a second portion, second portion is related to ( based on ) a transmission rate,)

Regarding **claims 9, 16, 20 and 29** Ralceigh et al. discloses everything claimed as applied above (see claim 5). In addition the apparatus includes:

Desai et al. teaches wherein said transmitter operates in accordance with the IEEE 802.11 air interface protocol (*see [0008], lines 1-9, communication network, and broadband internet*).

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Kawarai et al. invention with Desai et al. invention because Desai et al. invention provides an access technology that can expand the bandwidth available to an end user( see Desai et al. [0008], lines 5-9).

Regarding **Claims 10, 13, 17 and 25-27** Kawarai et al. in view of Desai et al. discloses a method comprising:

Kawarai et al. teaches transmitting a queued portion of a first frame at said first transmission rate into a shared-communications channel (see [0094], lines 16-20, packets are output (transmitting) from the input buffer); and

removing ( transmitting) said queued portion of said first frame wherein said removal is based on said first frame length(see [0094], lines 16-20, packets are output(transmitting) from the input buffer, of the same size inputted into buffer , reads on based on first frame length); and

queuing a first portion of a second frame wherein the length of said first portion is less than said second frame length and is based on said first transmission rate, first frame comprises m octets (reads on fixed size packets) (see figure 1, portion of divided sent to buffer (queue), see [0093], lines 1-6, packet divided and received by buffer (queue) a first portion,)

transmitting said first portion of said second frame at said second transmission rate into said shared-communications channel(see [0094], lines 16-20, packets are output(transmitting) from the input buffer)

queuing said second portion of said first frame, second frame comprises n octets(reads on fixed size packets) ( see figure 1, portion of divided sent to buffer( queue), see [0093], lines 1-6, packet divided and received by buffer(queue) a first portion, then second portion).

Desai et al. teaches storing a first description wherein said first description comprises (see [0352], lines 1-5, storing in the original descriptor field, see figure 37A-B)

1) a first frame length (see [0352], lines 1-5,packet size, figure 37A-B)

(2) a first transmission rate (data rates) (see [0352], lines 1-5,sustained rate, peak rate, figure 37A-B)

storing a second description wherein said second description comprises (see [0352], lines 1-5, storing in the original descriptor field, see figure 37A-B)

(1) a second frame length(see [0352], lines 1-5,packet size, figure 37A-B)

(2) a second transmission rate (data rates) (see [0352], lines 1-5,sustained rate, peak rate, figure 37A-B).

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Kawai et al. invention with Desai et al. invention because

Desai et al. invention provides an access technology that can expand the bandwidth available to an end user( see Desai et al. [0008], lines 5-9).

Regarding **claims 11, 14, 18 and 28** Kawarai et al. in view of Desai et al. discloses everything claimed as applied above (see claim 10). In addition the method includes:

Desai et al. teaches wherein said first transmission rate and said second transmission rate are different ( see figure 37A-B, sustained rate, peak rate, first transmission rate related to first frame portion, being different from the second transmission rate, related to second portion of frame).

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Kawarai et al. invention with Desai et al. invention because Desai et al. invention provides an access technology that can expand the bandwidth available to an end user( see Desai et al. [0008], lines 5-9).

Regarding **claims 12, 15, 19 and 23** Raleigh et al. discloses everything claimed as applied above (see claim 10). In addition the method includes:

Desai et al. teaches queuing a second portion of said second frame wherein the length of said second portion is less than said second frame length and is based on( the term 'based on' is a broad term in which the term 'based on' is interpreted broad as the length of the first portion is related to a first transmission rate) said second transmission rate ( see figure 1, receiving a second portion of packet divided by packet divider, see [0093], lines 1-6, packet divided and received by buffer a second portion ).

Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to combine Kawarai et al. invention with Desai et al. invention because Desai et al. invention provides an access technology that can expand the bandwidth available to an end user( see Desai et al. [0008], lines 5-9).

***Allowable Subject Matter***

3. **Claims 2, 3, 6, 7, and 22** objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MON CHERI S. DAVENPORT whose telephone number is (571)270-1803. The examiner can normally be reached on Monday - Friday 8:00 a.m. - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mon Cheri S Davenport/  
Examiner, Art Unit 2616  
August 13, 2008

/Brenda Pham/  
Primary Examiner, Art Unit 2616